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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File:

Office: Nebraska Service Center

Date:

JUN 13 2002

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

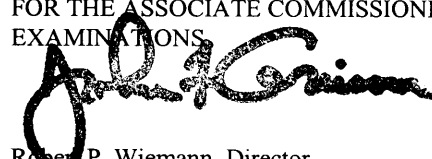
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a researcher at [REDACTED]

The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Along with background documentation pertaining to his field of research and copies of his published work and educational credentials, the petitioner submits several witness letters.

Chief executive officer of describes the company and the petitioner's work there:

specializes in high-tech government research and development. We are currently under contract from the to develop a component to control light transmission through a military pilot's visors in conjunction with their next generation helmet-mounted display program. . . . We use the electro-optics of liquid crystals to provide a fast, controllable mechanism for sun shielding. . . . The technology can also be transferred to the private sector for fast shutters for motor cycle helmets, sunglasses, etc. . . .

[The petitioner has conducted] extensive research in the field [of] induced phase separation in liquid crystal/polymer mixtures. . . . A major drawback in realizing all-plastic [liquid crystal] displays is that these devices require lamination of two flexible substrates. This can give rise to a significant reduction in yield and lifetime. . . . Recently, it was discovered that if a patterned field is applied during polymerization, the location of the polymer walls can be controlled. In particular, under proper conditions, the polymer can be forced out of the active area. [The

[redacted]

petitioner] played a major role in this finding and its application to liquid crystal displays. . . . [The petitioner's] results proved that phase separation of a LC-polymer mixture occurs due to non-uniformity of the electric field inside such a cell, causing the liquid crystal to fill space where the electric field is higher and the polymer to move into low field regions. This is a significant contribution and is of special interest to us since our technology has to be implemented on plastic substrates due to the strict requirements by both government and private sectors. . . .

In addition to my position at [redacted] I was also an adjunct faculty member of the [redacted] [The petitioner] was part of the group that I oversaw. To this end, I have observed his experimental abilities first hand. . . .

Currently, [the petitioner] is conducting research at the [redacted] at [redacted] We have employed him on a part-time basis to help us with our characterization facility.

[redacted] the petitioner's research and thesis advisor and director of the Liquid [redacted] states:

[The petitioner's] research has focused on understanding the electro-optic properties of cholesteric materials. These materials are being developed for the next generation of low power, flat panel displays that will be used for cellular phones, portable fax machines and electronic books and newspapers. These materials are particular[ly] attractive for these applications because they are reflective and do not require power hungry backlights. [The petitioner] has studied the reflective properties of cholesteric films, identifying the optimum configuration for cholesteric full color displays. These results were used by [redacted] Displays to prototype a full color cholesteric display which was named Product of the Year in 1997 by the prestigious Society for [redacted]

[redacted] associate professor at [redacted] and the director of Characterization Facilities at the [redacted]

[The petitioner] is one of the most distinguished young researchers that I have ever had the opportunity to interact with. I began to know him when he joined my research group at the Department of Molecular Photoelectronics, Institute of Physics, [redacted] in 1989. I was his immediate supervisor. He was one of the most talented and diligent researchers in my group. During three years of research, he has developed several breakthroughs as described below and has become one of the few experts in the field of liquid crystal science and display technology. . . .

Many people spend their entire lives in this area and never make a contribution at the level [the petitioner] has in the expanding field of liquid crystals.

Other witnesses who knew the petitioner in the 1980s and early 1990s offer similar endorsements of the petitioner's creativity and skill.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director stated that the documents of record "do not establish a sustained pattern of achievement," or that "the contributions of the alien petitioner are such that they measurably exceed those of his peers at this time."

On appeal, counsel quotes from various witness letters and asserts that the petitioner's "work has been presented and published in the field's foremost journals and conferences." Upon consideration, the petitioner's publication and presentation history does appear to establish that the petitioner's work has been particularly significant and influential in the field. The record demonstrates 19 worldwide citations of the petitioner's published work, primarily of a single article of which the petitioner was the primary author. While three of these citations are actually self-citations by the petitioner's collaborators, the remaining citations show that the petitioner's past work has had widespread and lasting influence on liquid crystal research. This influence appears to be reflected in a 1998 letter involving a conference in Italy, in which the organizers comment on the petitioner's "well known expertise in the field of liquid crystal physics." This evidence shows that the petitioner's work has attracted attention around the world, influencing researchers well outside of his own circle of collaborators and superiors. Such influence, when viewed in conjunction with the statements from those most familiar with the petitioner's past and present work, credibly supports the petitioner's claim of eligibility for the national interest waiver.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.